

## **DEPARTMENT OF EDUCATION**

### **Statement of Regulatory Priorities**

#### **I. Introduction**

The U.S. Department of Education (Department) supports States, local communities, institutions of higher education, and families in improving education and other services nationwide to ensure that all Americans, including those with disabilities, receive a high-quality education and are prepared for high-quality employment. We provide leadership and financial assistance pertaining to education and related services at all levels to a wide range of stakeholders and individuals, including State educational and other agencies, local school districts, providers of early learning programs, elementary and secondary schools, institutions of higher education, career and technical schools, nonprofit organizations, postsecondary students, members of the public, families, and many others. These efforts are helping to ensure that all children and students from pre-kindergarten through grade 12 will be ready for, and succeed in, postsecondary education or employment, and that students attending postsecondary institutions, or participating in other postsecondary education options, are prepared for a profession or career.

We also vigorously monitor and enforce the implementation of Federal civil rights laws in educational programs and activities that receive Federal financial assistance from the Department, and support innovative programs, research and evaluation activities, technical assistance, and the dissemination of data, research, and evaluation findings to improve the quality of education.

Overall, the laws, regulations, and programs that the Department administers will affect nearly every American during his or her life. Indeed, in the 2019-20 school year, about 57 million students will attend an estimated 133,000 public and private elementary and secondary schools in approximately 13,600 public school districts, and about 20 million students will enroll in degree-granting postsecondary institutions. Many of these students may benefit from some degree of financial assistance or support from the Department.

In developing and implementing regulations, guidance, technical assistance, evaluations, data gathering and reporting, and monitoring related to our programs, we are committed to working closely with affected persons and groups. Our core mission includes serving the most vulnerable, and facilitating

equal access for all, to ensure all students receive a high-quality education, and complete it with a well-considered and attainable path to a sustainable career. Toward these ends, we work with a broad range of interested parties and the general public, including families, students, and educators; State, local, and Tribal governments; other Federal agencies; and neighborhood groups, community-based early learning programs, elementary and secondary schools, postsecondary institutions, rehabilitation service providers, adult education providers, professional associations, advocacy organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we seek public participation at the key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the internet or by regular mail. We also continue to seek greater public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies.

To facilitate the public's involvement, we participate in the Federal Docket Management System (FDMS), an electronic single Government-wide access point ([www.regulations.gov](http://www.regulations.gov)) that enables the public to submit comments on different types of Federal regulatory documents and read and respond to comments submitted by other members of the public during the public comment period. This system provides the public with the opportunity to submit comments electronically on any notice of proposed rulemaking or interim final regulations open for comment, as well as read and print any supporting regulatory documents.

We are committed to reducing burden with regard to regulations, guidance, and information collections, reducing the burden on information providers involved in our programs, and making information easily accessible to the public. To that end and consistent with Executive Order 13777 ("Enforcing the Regulatory Reform Agenda"), we are in the process of reviewing all of our regulations and guidance to modify and rescind items that: (1) eliminate jobs, or inhibit job creation; (2) are outdated, unnecessary, or ineffective; (3) impose costs that exceed benefits; (4) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (5) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that

rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or (6) derive from or implement Executive orders or other Presidential directives that have been subsequently rescinded or substantially modified.

## **II. Regulatory and Deregulatory Priorities**

### *Proposed Rulemakings*

The following are the key regulatory and deregulatory rulemaking actions the Department is planning for the coming year. We provide below information about the potential costs and benefits for several of these rulemaking actions, including whether they would be considered regulatory or deregulatory actions under Executive Order 13771. For rulemakings that we are just beginning now, we have limited information about their potential costs and benefits and cannot estimate at this time whether they would be considered regulatory or deregulatory actions.

### *Postsecondary Education/Federal Student Aid*

The Department will continue its work on rulemakings in the area of higher education and Federal Student Aid under the Higher Education Act of 1965, as amended (HEA). The Department published new proposed regulations that would govern the William D. Ford Federal Direct Loan (Direct Loan) Program regarding the standard and the process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of a school. We also have proposed to amend other related sections of the Direct Loan Program regulations and the Student Assistance General Provisions regulations providing the financial responsibility standards and disclosure requirements for schools. In addition, we proposed to amend the discharge provisions in the Federal Perkins Loan, Direct Loan, and Federal Family Education Loan programs. These proposed regulations would revise those promulgated by the Department in 2016.

Through our most recent negotiated rulemaking process, we reached consensus on all of the issues that were negotiated. The negotiating committee was comprised of negotiators representing a diverse range of interests, including students, employers, veterans, accreditors, financial aid administrators, student legal aid organizations, and minority-serving, faith-based, online, two-year and four-year, public, non-profit and proprietary colleges and universities. The committee discussed issues related to

accreditation and student financial aid, which were placed into three “buckets.” Final consensus on a bucket of issues meant there was consensus on all issues within that bucket. The first bucket included issues related to accreditation in 34 CFR 600, 602, 603, and 668, as well as the Robert C. Byrd Scholarship Program regulations in 34 CFR 654. The second bucket included issues related to the TEACH grant program in 34 CFR 686 and the treatment of faith-based entities in student aid and grant programs in 34 CFR 674, 675, 676, 682, 685, 690, 692, and 694. The third bucket included issues related to distance learning and educational innovation in 34 CFR 600 and 668. The committee reached consensus on each of the three buckets.

The Department has issued or will issue separate NPRMs for each bucket of issues. As noted above, the Department initiated these rulemakings with the goals of alleviating unnecessary regulatory burdens and ensuring appropriate protections for students, institutions, taxpayers, and the Federal government. Through the use of the negotiated rulemaking process, we have received input from a diverse range of interests and affected parties.

The Secretary published proposed regulations, using negotiated rulemaking committee consensus language, to revise regulations related to the Secretary’s recognition of accrediting agencies, including specific topics such as: clarification of the core oversight responsibilities among each entity in the regulatory triad – accrediting agencies, States, and the Department – to hold institutions accountable; the requirements governing the oversight of member institutions by accrediting agencies; requirements for accrediting agencies to honor institutional mission; criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality; and simplifying the process for recognition and review of accrediting agencies. These proposed regulations also addressed State authorization requirements, using negotiated rulemaking committee consensus language, related to programs offered through distance education or correspondence courses, including disclosures about such programs to enrolled and prospective students.

The Secretary will publish proposed regulations, using negotiated rulemaking committee consensus language, addressing the requirements of the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, and designed to minimize inadvertent grant-to-loan conversions and

improve outcomes for TEACH Grant recipients. These proposed regulations would also revise regulations regarding the eligibility of faith-based entities to participate in the Title IV, HEA programs.

The Secretary also will publish, using negotiated rulemaking committee consensus language, proposed regulations on distance education and innovation to reduce barriers to innovation in the way institutions deliver educational materials to students while providing reasonable safeguards to limit the risks of innovation to students and taxpayers, including proposed regulations relating to credit hours, competency-based education, direct assessment programs, and regular and substantive interaction between faculty and students in the delivery of distance education programs, to promote greater access for students to high-quality, innovative programs of postsecondary education.

#### *Civil Rights/Title IX*

The Secretary published proposed regulations addressing issues under Title IX of the Education Amendments of 1972, as amended. In this action, we proposed to clarify schools' obligations in redressing sex discrimination, including complaints of sexual misconduct, and the procedures by which they must do so.

#### *Deregulatory Actions*

The Department anticipates issuing a number of deregulatory actions in the upcoming fiscal year. For example, consistent with Executive Order 13777, the Department evaluated the Education Department General Administrative Regulations (EDGAR) for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations, and identified ways in which EDGAR could be updated, streamlined, and otherwise improved. Specifically, we plan to propose to amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations to implement a wide range of recommendations to streamline existing regulatory requirements. The unified agenda identifies other deregulatory actions that will provide cost savings and clarity.

Additionally, during the course of its Executive Order 13777 review, the Department's Regulatory Reform Task Force has identified some information collections (ICRs) as being unnecessary or ineffective. We have discontinued or modified these ICRs in 2019 and are continually working to identify additional ICRs that can be discontinued or modified.

### **III. Regulatory Review**

As stated previously, the Department is continuing its comprehensive regulatory reform efforts pursuant to Executive Order 13777, focusing on rescinding and modifying outdated, unnecessary, or ineffective regulations, guidance, and information collections. Section 3(e) of the Executive order requires the Department, as part of this effort, to “seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations” on regulations that meet some or all of the criteria above. The Department will continue to consider public input and feedback as part of these efforts.

#### **IV. Principles for Regulating**

Over the next year, we may need to issue other regulations because of new legislation or programmatic changes. In doing so, we will follow the Principles for Regulating, which determine when and how we will regulate. Through consistent application of those principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider the following:

- Whether regulations are essential to promote quality and equality of opportunity in education.
- Whether a demonstrated problem cannot be resolved without regulation.
- Whether regulations are necessary to provide a legally binding interpretation to resolve ambiguity.
- Whether entities or situations subject to regulation are similar enough that a uniform approach through regulation would be meaningful and do more good than harm.
- Whether regulations are needed to protect the Federal interest, that is, to ensure that Federal funds are used for their intended purpose and to eliminate fraud, waste, and abuse. In deciding how to regulate, we are mindful of the following principles:
  - Regulate no more than necessary.
  - Minimize burden to the extent possible, and promote multiple approaches to meeting statutory requirements if possible.
  - Encourage coordination of federally funded activities with State and local reform activities.
  - Ensure that the benefits justify the costs of regulating.

- To the extent possible, establish performance objectives rather than specify the behavior or manner of compliance a regulated entity must adopt.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to achieve desired results.